

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
DOCKET NO. 5:12-cv-00008-MOC

THIS MATTER is before the court on review of the Commissioner's Motion to Withdraw her Objection to United States Magistrate Judge David S. Cayer's Memorandum and Recommendation (#24) and Motion to Cancel the Hearing Calendared for September 11, 2013 (#25). Such motions reflect consultation with opposing counsel, who does not join in such requests. Inasmuch as such withdrawal of the objection results is a favorable Sentence Four outcome for plaintiff, and good cause having otherwise been shown for the relief sought, the court will not await a response, but instead grant relief consistent with the Memorandum and Recommendation of Judge Cayer.¹ Further, the court finds that the Commissioner has acknowledged the concerns expressed in this

1 While plaintiff timely filed a Response to the Commissioner's Objection (#20), plaintiff has not
objected to the relief recommended by Judge Cayer and agreed in her response that "Remand to an ALJ
is the appropriate remedy, as stated in the Memorandum [and Recommendation]." Response at 3.

court's August 19, 2013, Order (#21), and taken appropriate remedial steps, making a hearing on other issues unnecessary.

Despite the lack of objections, the court has carefully reviewed Judge Cayer's Memorandum and Recommendation. The *Federal Magistrates Act of 1979*, as amended, provides that "a district court shall make a *de novo* determination of those portions of the report or specific proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); Camby v. Davis, 718 F.2d 198, 200 (4th Cir.1983). However, "when objections to strictly legal issues are raised and no factual issues are challenged, *de novo* review of the record may be dispensed with." Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982). Similarly, *de novo* review is not required by the statute "when a party makes general or conclusory objections that do not direct the court to a specific error in the magistrate judge's proposed findings and recommendations." Id. Moreover, the statute does not on its face require any review at all of issues that are not the subject of an objection. Thomas v. Arn, 474 U.S. 140, 149 (1985); Camby v. Davis, 718 F.2d at 200. Nonetheless, a district judge is responsible for the final determination and outcome of the case, and accordingly the court has conducted a careful review of the magistrate judge's recommendation.

After conducting such careful review, which has included consideration of relevant parts of the Administrative Record, the court determines that the recommendation of the magistrate judge is fully consistent with and supported by current law. Further, the brief factual background and recitation of issues is supported by the

applicable pleadings. Based on such determinations, the court will fully affirm the Memorandum and Recommendation and grant relief in accordance therewith.

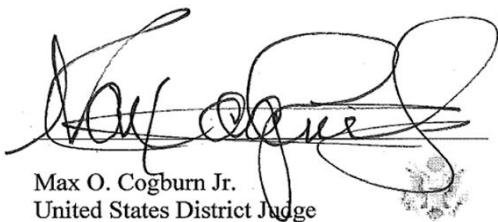
ORDER

IT IS, THEREFORE, ORDERED that

(1) the Commissioner's Motion to Withdraw her Objection to United States Magistrate Judge David S. Cayer's Memorandum and Recommendation (#24) and Motion to Cancel the Hearing Calendared for September 11, 2013 (#25) are **GRANTED**; and

(2) the Memorandum and Recommendation (#18) is **AFFIRMED**, plaintiff's Motion for Summary Judgment (#8) is **GRANTED**, the Commissioner's Motion for Summary Judgment (#13) is **DENIED**, the Commissioner's decision is **REVERSED** and this matter is **REMANDED** for a new hearing before a different ALJ consistent with the instructions contained in this court's earlier Order of Remand in 5:08cv134, and Judge Cayer's Memorandum and Recommendation herein, all pursuant to Sentence Four of 42 U.S.C. § 405(g).

Signed: September 4, 2013



Max O. Cogburn Jr.
United States District Judge

